

### **REMARKS**

Claims 1-20 are now pending in the application. Claims 5-9 and 14-20 have been withdrawn. The amendments to the claims contained herein are intended to broaden the scope thereof and/or are of equivalent scope as originally filed and, thus, are not a narrowing amendment. The Examiner is respectfully requested to reconsider and withdraw the rejection in view of the amendments and remarks contained herein.

### **ELECTION/RESTRICTIONS**

Applicants acknowledge the stated reasons for making final the restriction and election of species requirements. Therefore, Applicants reserve the right to petition the Director to have the requirement removed or amended. Also, Applicants request that upon allowance of a generic claim, that all claims within its breadth reading on each species be allowed.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-4 and 10-13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ferree (U.S. Pat. No. 4,727,744). This rejection is respectfully traversed.

Ferree is directed to a dent removing tool 10 which is able to remove a plurality of dents from curved tubing and specifically illustrates only musical instruments. The tool 10 generally includes a plurality of beads, such as force transmitting beads 22 and a dent ball 32. Ferree teaches that forces are transmitted along the force transfer beads 22 to the dent ball 32 to force the shape of the tube to change, thus removing the dents from the tube. Therefore, Ferree teaches that the balls must be extremely dense

and able to change the shape of a tube into which they are forced, thus deforming the wall of the tube.

Independent Claim 1 has been amended to recite “an articulating member having at least one handle portion; a bone contacting generally spheroidal member operable to be pulled through the joint with the one handle portion; and a plurality of the bone contacting generally spheroidal members having a bone contacting surface coupled to said articulating member and operable to contact a bone forming the joint to selectively distract the joint.” Independent Claim 10 has been amended to recite “a plurality of bone contacting spheroidal members each having a bone contacting surface; an articulating coupling mechanism, operable to retain the bone contacting spheroidal members; wherein the bone contacting spheroidal members are configured to separate the articulating bone surfaces at a first predetermined distance as the bone contacting surfaces engage the bone.”

The recited bone contacting spheroidal members are not anticipated by Ferree. Ferree teaches a device that is operably *pounded into* a tubing to remove a dent formed on an interior surface of a tubing. The device in Ferree includes balls that are operable to contact the surface of the *tubing* to *deform* a surface of the tubing in a selected manner. Ferree teaches that the device disclosed therein would only achieve its purpose by changing the surface of the portion that the balls are contacting. Ferree does not teach pulling any bone contacting generally spheroidal members through a joint or including any bone contacting surfaces. Ferree does not anticipate a bone contacting generally spheroidal member because Ferree does not disclose, teach, or fairly suggest a bone contacting spheroidal member. Therefore, Ferree could not


anticipate each of the elements of independent Claims 1 and 10. Thus, independent Claims 1 and 10, and each of the claims that depend directly or indirectly therefrom, are in condition for allowance.

### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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